

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3, California Code of Regulations
Section 3417(b), Mexican Fruit Fly Interior Quarantine
INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3417 is to provide for the State to regulate the movement and possible carriers of Mexican fruit fly from the area under quarantine to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the emergency amendment of Section 3417(b) is necessary is as follows:

Mexican fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Many kinds of fruit, including apple, apricot, avocado, citrus (except lemon and sour lime), guava, nectarine, peach, pear, plum, and pomegranate, and the fruiting bodies of some wild and ornamental plants are known to be hosts or possible hosts of the Mexican fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

Mexican fruit flies have recently been detected at two separate locations on properties in

the Escondido area of the County of San Diego. On November 6, 2007, a total of five female Mexican fruit flies were taken from traps on properties in the Escondido area of San Diego County. The detection of multiple Mexican fruit fly females at two separate properties is indicative of an incipient infestation of Mexican fruit fly in the Escondido area of San Diego County.

The proposed quarantine area includes the two properties as epicenters and a buffer zone extending approximately 4-1/2 miles in each direction from these epicenters. A buffer zone is necessary because the fly can spread naturally (as well as artificially in infested hosts). The boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Agriculture, and the San Diego County Agricultural Commissioner and is considered the minimum area around the infested properties that should be regulated to prevent artificial spread of Mexican fruit fly to noninfested areas.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture or other states or countries enact a quarantine against California products which can host and carry the fly. It is estimated that the establishment of Mexican fruit fly could cost an additional \$124 million per year in increased production costs. Mexican fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has always been successfully eradicated.

The Mexican fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public

Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

This amendment of Section 3417(b) established approximately 78 square miles surrounding the infestation in the Escondido area of San Diego County as the area under quarantine for Mexican fruit fly. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it was necessary to amend this regulation to establish a new quarantine area in the Escondido area of San Diego County as an emergency action.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3417 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioner of San Diego County requested the change in the regulations.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

Within the quarantine area, the Department has identified 58 markets/produce vendors. These businesses must maintain quarantine commodities in a manner that precludes exposure to Mexican fruit fly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

Within the quarantine area, the Department has estimated there are 81 yard maintenance businesses that must safeguard all host fruit being removed from properties within the quarantine area by placing it in plastic bags for disposal at a landfill. The plastic bags are inexpensive and there is no extra material for disposal at a landfill, as it would have been removed anyway.

There are 25 nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra material for landfill disposal does not add appreciably to their existing disposal costs. The Department has identified one farmers' market/swap meet in the area under quarantine. Businesses selling host produce at these locations must maintain the

quarantine commodities in a manner that precludes exposure to Mexican fruit fly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

The Department has determined there is one fruit hauler located within the regulated area. The fruit hauler must maintain the quarantine commodities in a manner that precludes exposure to Mexican fruit fly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These methods of safeguarding would not represent a significant economic impact.

No business has gone out of business due to the quarantine. Many businesses have benefited from the sales of safeguarding materials and others have benefited from Mexican fruit fly expenditures by State and Federal governments.

Based on the above information, it was determined that the amendment of Section 3417(b) will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are relatively low and, for the most part, a number of optional ways to comply are available to businesses so they may select the means with the lowest cost and easiest implementation for them. For many businesses, no additional costs were incurred.

Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3417(b):

“Annual Estimated Economic Impact – Escondido Area, San Diego County, Mexican Fruit Fly Interior Quarantine,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, January 8, 2008.

“Annual Fruit Fly Quarantine Cost Basis,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, January 8, 2008.

E-mail of January 7, 2008 to Stephen Brown from Casey Estep and its attachments.

E-mail of November 14, 2007 to Amber Morris from Bob Atkins.

Letter of November 8, 2007 to A.G. Kawamura from Robert G. Atkins.

Pest and Damage Record #1442976 (November 6, 2007), California Department of Food and Agriculture.

Pest and Damage Record #1442975 (November 6, 2007), California Department of Food and Agriculture.

“Action Plan for Mexican Fruit Fly, Anastrepha ludens,” Revised April 2004, California Department of Food and Agriculture.